

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SM MERGER/ARBITRAGE, L.P., *on behalf of*
themselves and all others similarly situated, et al., :
Plaintiffs, : 21-CV-8255 (JMF)
-v- :
BRISTOL-MYERS SQUIBB COMPANY et al., :
Defendants. :
X
TARA WILLIAMS, *on behalf of herself and all others* :
similarly situated, :
Plaintiff, : 21-CV-9998 (JMF)
-v- :
BRISTOL-MYERS SQUIBB COMPANY et al., :
Defendants. :
X
EHAB KHALIL, *on behalf of himself and all others* :
similarly situated, et al., :
Plaintiff, : 21-CV-10351 (JMF)
-v- : ORDER
BRISTOL-MYERS SQUIBB COMPANY et al., :
Defendants. :
X

JESSE M. FURMAN, United States District Judge:

On October 6, 2021, Plaintiffs in 21-CV-8255 (JMF) filed a class action lawsuit on behalf of former Celgene shareholders that received Contingent Value Rights (“CVRs”) in exchange for their Celgene shares pursuant to Bristol Myers’ acquisition of Celgene on November 20, 2019. See ECF

No. 1. The complaint alleges violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 and Rule 14a-9 promulgated thereunder.

As explained in the Court’s December 7, 2021 Order, Section 78u-4(a)(3)(A) of the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(A), requires that within twenty days of the filing of the complaint, Plaintiff shall “cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class . . . of the pendency of the action, the claims asserted therein, and the purported class period.” 15 U.S.C. § 78u-4(a)(3)(A)(i). The PSLRA also provides that “not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.” *Id.* In addition, the Act requires that not later than 90 days after the date on which notice is published, the Court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the Court determines to be most capable of adequately representing the interests of class members. *See id.* § 78u-4(a)(3)(B)(i). In the event that more than one action on behalf of a class asserting substantially the same claim or claims has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the Court shall not appoint a lead plaintiff until after a decision on the motion to consolidate is rendered. *See id.* § 78u-4(a)(3)(B)(ii).

Plaintiff’s counsel notified the Court that the required notice was published on **October 6, 2021**. ECF No. 70. Members of the purported class therefore had until December 6, 2021, to move the Court to serve as lead plaintiffs. Several motions were indeed filed by that date. Any opposition to these motions shall be served and filed by **December 15, 2021**. Any replies shall be filed by **December 20, 2021**. Finally, unless and until the Court orders otherwise, a telephone conference shall be held on **December 22, 2021, at 11:15 a.m.** to consider any motions for appointment of lead plaintiff and lead counsel and for consolidation. To access the conference,

counsel should call 888-363-4749 and use access code 5421540#. Members of the press and public may call the same number, but will not be permitted to speak during the conference. Participants are reminded to follow the procedures for teleconferences described in the Court's Individual Rules and Practices, which are available at <https://nysd.uscourts.gov/hon-jesse-m-furman>. Among other things, those procedures require counsel to provide advance notice of who will participate in the conference and the telephone numbers they will use to participate.

If an amended complaint or a related case is filed prior to appointment of a lead plaintiff, Plaintiff's counsel shall, **within three business days**, submit a letter to the Court identifying any differences between the allegations in the new complaint(s) and the allegations in the original complaint (including but not limited to any differences in the claims asserted and the relevant class periods) and showing cause why the Court should not order republication of notice under the PSLRA and set a new deadline for the filing of motions for appointment. *See, e.g., Hachem v. Gen. Elec. Inc.*, No. 17-CV-8457 (JMF), 2018 WL 1779345 (S.D.N.Y. Apr. 11, 2018). This does not apply to Case Nos. 21-CV-9998 and 21-CV-10351, which have already been identified as potentially related to this case, and the plaintiffs of which have already filed motions to be appointed lead plaintiff in this case, *see* ECF Nos. 60, 61.

It is further ORDERED that the named plaintiffs shall promptly serve a copy of this Order on each of the defendants.

SO ORDERED.

Dated: December 8, 2021
New York, New York



JESSE M. FURMAN
United States District Judge